In the High Court of Judicature at Madras

Dated:12.06.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice V.DHANAPALAN

Habeas Corpus Petition No.183 of 2006

R.Rasathi .. Petitioner

vs.

1. The District Magistrate &
   District Collector,
   Villupuram District, Villupuram.

2. The Secretary to Government,
   Prohibition and Excise Department,
   Fort St. George, Chennai-9. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus to call for the records pertaining to the order of the 1st respondent dated 08.09.2005 in C2/48271/2005 detaining the detenu Ramalingam, S/o: Subramani Udayar as a Goonda under Tamil Nadu Act 14/1982 and set aside the same and direct the respondents to produce the said detenu now detained in the Central Prison, Cuddalore before this Court and set him at liberty.

For petitioner : Ms.Mythili Srinivas
For respondents : Mr.M.Babu Muthu Meeran,
Addl. Public Prosecutor

ORDER

(Order of the Court was made by P. SATHASIVAM,J.,)

The petitioner, who is the wife of the detenu by name Ramalingam, who was detained as a "Goonda" as contemplated under Section 3 (1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (in short "Tamil Nadu Act 14 of 1982") by the impugned order of detention dated 08.09.2005, challenges the same in this petition.

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2. Heard both sides.

3. At the foremost, learned counsel for the petitioner submitted that there was undue delay in disposal of the representation of the detenu dated 26.09.2005 which vitiates the ultimate order of detention. With reference to the said aspect, the learned Additional Public Prosecutor has furnished the particulars, which show that the representation of the detenu dated 26.09.2005 was received by the Government on 28.09.2005 and remarks were called for on 30.09.2005. Thereafter, the remarks were received by the Government on 19.10.2005 and the file was submitted on 20.10.2005 and the same was dealt with by the Under Secretary and the Deputy Secretary on the same day, i.e. on 20.10.2005 and finally, the Minister for Prohibition and Excise passed the order on 21.10.2005. The rejection letter was prepared on 28.10.2005 and the same was sent to the detenu on 31.10.2005 and served to him on 03.11.2005. The learned counsel for the petitioner submitted that though an order was passed by the Minister for Prohibition and Excise even on 21.10.2005, there is no justifiable reason for taking time till 28.10.2005 for preparation of the rejection letter. She has also pointed out that though the sponsoring authority has received a communication from the Collectorate on 05.10.2005, the Government has furnished remarks only on 15.10.2005, i.e. after a period of 10 days. As rightly pointed out by the learned counsel for the petitioner, though the sponsoring authority has received the intimation even on 05.10.2005 requesting to forward the necessary remarks, the same were received by the Collectorate from the sponsoring authority only on 15.10.2005. It is not in dispute that only at the instance of the sponsoring authority, the impugned detention order came to be passed. In such circumstances, it would not open to the sponsoring authority to have taken 10 days time for forwarding the remarks to the Collectorate and there is no explanation from the officer concerned for taking such time.

4. Coming to the delay between 21.10.2005 and 28.10.2005, here again, as rightly pointed out by the learned counsel for the petitioner, even though the highest authority, viz., Minister for Prohibition and Excise has passed order on 21.10.2005, there is no reason at all for taking time till 28.10.2005 for preparation of the rejection letter. In the absence of any explanation by the person concerned in the form of an affidavit, we hold that the delay is on the higher side, which ultimately vitiates the detention order passed by the detaining authority. On this ground, the detention order is liable to be quashed

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and accordingly the same is quashed.

5. The Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.1. The District Magistrate & District Collector,
Villupuram District, Villupuram.

2. The Secretary to Government,State of Tamil Nadu,
Prohibition and Excise Department, Fort St. George,
Chennai.

3. The Superintendent, Central Prison, Cuddalore.
(In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

+ one cc to Mr. R. Srinivas, Advocate sr no. 24202

PV(CO)
nm(16.06.2006)

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